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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE TRUJILLO,  
individually and on behalf of themselves and  
all others similarly situated.

Case No. 4:20-cv-03664-YGR-SVK

Plaintiff.

**JOINT SUBMISSION RE: SEALING  
PORTIONS OF THE JANUARY 17, 2023  
ORDER ON (1) GOOGLE'S MOTION FOR  
RELIEF REGARDING PRESERVATION,  
AND (2) PARTIES' JOINT SUBMISSION  
RE PRESERVATION IN LIGHT OF  
CLASS CERTIFICATION ORDER (DKT.  
830)**

VS.

Judge: Hon. Susan van Keulen

GOOGLE LLC,  
Defendant

1 January 24, 2023

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen  
4 San Jose Courthouse  
5 Courtroom 6 - 4th Floor  
280 South 1st Street  
5 San Jose, CA 95113

6 Re: Joint Submission re: Sealing Portions of the January 17, 2023 Order on (1)  
7 Google’s Motion for Relief Regarding Preservation, and (2) Parties’ Joint  
Submission re Preservation in Light of Class Certification Order  
*Brown v. Google LLC*, Case No. 4:20-cv-03664-LHK-SVK (N.D. Cal.)

8

9 Dear Magistrate Judge van Keulen:

10 Pursuant to Your Honor’s January 17, 2023 Redaction Order (Dkt. 831), Plaintiffs and  
11 Google LLC (“Google”) hereby jointly propose redactions to the Court’s January 17, 2023 sealed  
12 Order on (1) Google’s Motion for Relief Regarding Preservation, and (2) Parties’ Joint  
13 Submission re: Preservation in Light of Class Certification Order (Dkt. 830).

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1           **I. INTRODUCTION**

2           As ordered by the Court on January 17, 2022 (*see* Dkt. No. 831), Google and Plaintiffs  
 3 jointly propose redactions to the Court’s January 17, 2022 Sealed Order regarding Google’s request  
 4 to be relieved from its ongoing preservation obligations (Dkt. No. 830) (“Order”). Google contends  
 5 that the material proposed for redaction contains Google’s confidential and proprietary information  
 6 regarding highly sensitive features of Google’s internal systems and operations that Google does  
 7 not share publicly, including various types of Google’s internal projects and metrics, that Google  
 8 maintains as confidential in the ordinary course of its business and is not generally known to the  
 9 public or Google’s competitors. This information is highly confidential and should be protected.

10           This Administrative Motion pertains to the following information contained in the Order:

11 <b>Document</b>	12 <b>Portions to be Filed Under Seal</b>	13 <b>Party Claiming Confidentiality</b>
14           January 17, 2023 Order on (1) 15           Google’s Motion for Relief Regarding Preservation, and (2) Parties’ Joint Submission re: Preservation in Light of Class Certification Order	16           Highlighted portions at: 17           Page 1:15	18           Google

19           The parties conferred on the proposed redactions to the Order. Plaintiffs do not oppose  
 20 sealing the proposed redactions and thus today’s submission is presented jointly.

21           **II. LEGAL STANDARD**

22           The common law right of public access to judicial records in a civil case is not a  
 23 constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589,  
 24 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that  
 25 “courts have refused to permit their files to serve as reservoirs of . . . sources of business information  
 26 that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at  
 27 issue constitutes “competitively sensitive information,” such as “confidential research,  
 28 development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*,  
 2014 WL 4965995, at \*4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d  
 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of

1 materials for many types of information, including, but not limited to, trade secrets or other  
 2 confidential research, development, or commercial information”).

3 **III. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”  
 4 STANDARD AND SHOULD ALL BE SEALED**

5 Courts have repeatedly found it appropriate to seal documents that contain “business  
 6 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good  
 7 cause to seal is shown when a party seeks to seal materials that “contain[ ] confidential information  
 8 about the operation of [the party’s] products and that public disclosure could harm [the party] by  
 9 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014  
 10 WL 6986068, at \*1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive  
 11 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*  
 12 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at \*2 (N.D. Cal. Mar. 4, 2015)  
 13 (information “is appropriately sealable under the ‘compelling reasons’ standard where that  
 14 information could be used to the company’s competitive disadvantage”) (citation omitted).

15 Here, the Order comprises confidential information regarding highly sensitive features of  
 16 Google’s internal systems and operations that Google does not share publicly. Specifically, this  
 17 information provides details related to various types of Google’s internal projects and metrics. Such  
 18 information reveals Google’s internal strategies, system designs, and business practices for  
 19 operating and maintaining many of its important services while complying with legal and privacy  
 20 obligations.

21 Public disclosure of the above-listed information would harm Google’s competitive standing  
 22 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of  
 23 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone  
 24 is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No.  
 25 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal  
 26 certain sensitive business information related to Google’s processes and policies to ensure the  
 27 integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*,  
 28 No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales

1 data because “disclosure would harm their competitive standing by giving competitors insight they  
 2 do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at \*8 (W.D. Wash. May 8,  
 3 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is  
 4 not publically available”).

5 Moreover, if publicly disclosed, malicious actors may use such information to seek to  
 6 compromise Google’s internal systems and data structures. Google would be placed at an increased  
 7 risk of cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re*  
 8 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at \*3 (N.D. Cal. Sept. 25, 2013) (sealing “material  
 9 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”  
 10 because if made public, it “could lead to a breach in the security of the Gmail system”). The security  
 11 threat is an additional reason for this Court to seal the identified information.

12 The information Google seeks to redact is the minimal amount of information needed to  
 13 protect its internal systems and operations from being exposed to not only its competitors but also  
 14 to nefarious actors who may improperly seek access to and disrupt these systems and operations.  
 15 The “good cause” rather than the “compelling reasons” standard should apply but under either  
 16 standard, Google’s sealing request is warranted.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Google respectfully requests that the Court seal the identified  
 19 portions of the Order. Plaintiffs do not oppose.

20  
 21 Respectfully submitted,

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## **ATTESTATION OF CONCURRENCE**

I am the ECF user whose ID and password are being used to file this Joint Submission. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document.

Dated: January 24, 2023

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Andrew H. Schapiro  
*Counsel on behalf of Google LLC*